

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN HANNI, individually and on
behalf of all others similarly
situated,

Plaintiff,

v.

AMERICAN AIRLINES, INC.,

Defendant.

No. C 08-00732 CW

ORDER GRANTING
DEFENDANT'S
MOTION TO DISMISS
IN PART AND
DENYING IT IN
PART

Defendant American Airlines, Inc. (AA) has filed a motion to
dismiss Plaintiff Kathleen Hanni's first amended complaint (FAC).
Plaintiff opposes Defendant's motion. The motion was taken under
submission on the papers. Having considered all of the papers
filed by the parties, the Court grants in part Defendant's motion
to dismiss and denies it in part.

BACKGROUND

On December 28, 2007, Plaintiff filed this putative class

1 action, alleging claims based on Plaintiff's experiences on a
2 December 29, 2006 American Airlines flight from San Francisco,
3 connecting at Dallas-Forth Worth Airport (DFW), to Mobile, Alabama.
4 Plaintiff alleges that the seven hour trip took over fifty hours
5 due to various delays, which included nine-and-one-half hours
6 confined on the airplane on the runway at the Austin, Texas
7 airport. The complaint brought claims for false imprisonment,
8 intentional infliction of emotional distress, negligence, breach of
9 contract and intentional misrepresentation.

10 Defendant previously moved pursuant to Federal Rules of Civil
11 Procedure 9(b) and 12(b)(6) to dismiss the complaint against it.
12 Defendant argued first that Plaintiff's claims are preempted by the
13 Federal Aviation Act (FAA) and the Airline Deregulation Act (ADA).
14 In the alternative, Defendant argued that each of Plaintiff's
15 causes of action failed to state a claim upon which relief could be
16 granted and that she failed to plead her fraud claim with the
17 particularity required by Rule 9(b).

18 The Court granted the motion in part and denied it in part,
19 finding that (1) Plaintiff's claims were field preempted by the FAA
20 to the extent they were based on Defendant's decision to re-route
21 her flight from Dallas Fort Worth Airport to the Austin Airport
22 rather than delaying or cancelling it; (2) Plaintiff's claims were
23 explicitly preempted by the ADA to the extent that they were
24 controlled by specific regulations; (3) Plaintiff's breach of
25 contract claim was explicitly preempted by the ADA to the extent it
26 was based on a breach of the implied covenant of good faith and
27 fair dealing; and (4) Plaintiff failed to allege facts sufficient
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1 to state a claim for false imprisonment, negligence, breach of
2 contract or fraud.

3 The Court advised Plaintiff that she could file an amended
4 complaint if: (1) she could allege facts in support of her claim
5 for false imprisonment sufficient to establish that Defendant
6 lacked legal authority to keep her on the airplane; (2) she could
7 identify any duty, independent of the duties set forth in the
8 Conditions of Carriage (COC), owed by Defendant to her, to
9 establish a claim for negligence; (3) she could identify the manner
10 in which Defendant breached specific terms of the COC; or (4) she
11 could plead with particularity which statements she alleges were
12 fraudulent, who made those statements, how she will prove that they
13 were knowingly false when made and the manner in which she relied
14 on those statements to her detriment.

15 Plaintiff filed her FAC on May 15, 2008. Plaintiff again
16 alleges claims for false imprisonment, negligence, breach of
17 contract and fraud. Plaintiff has included three additional causes
18 of action: conversion, civil conspiracy and a claim pursuant to the
19 Racketeer Influenced and Corrupt Organizations Act (RICO), 18
20 U.S.C. § 1961.

21 LEGAL STANDARD

22 As stated in the Court's order regarding the first motion to
23 dismiss, when considering a motion to dismiss under Rule 12(b)(6)
24 for failure to state a claim, dismissal is appropriate only when
25 the complaint does not give the defendant fair notice of a legally
26 cognizable claim and the grounds on which it rests. See Bell Atl.
27 Corp. v. Twombly, __ U.S. __, 127 S. Ct. 1955, 1964 (2007). In
28

1 considering whether the complaint is sufficient to state a claim,
2 the court will take all material allegations as true and construe
3 them in the light most favorable to the plaintiff. NL Indus., Inc.
4 v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).

5 DISCUSSION

6 I. Preemption

7 Defendant "requests that the Court revisit its analysis"
8 regarding explicit preemption under the ADA. However, as Plaintiff
9 points out, Defendant's "regret[]" that it did not brief this issue
10 more fully in its previous memoranda" is not sufficient cause for
11 this Court to reconsider its previous decision. Moreover,
12 Defendant misstates the Court's previous order and the relevance of
13 the authority on which it now relies. The Court did not find that
14 ADA could never expressly preempt state common law claims. Rather,
15 it found that the ADA does not, in this case, preempt Plaintiff's
16 common law claims.

17 II. Response to Court's Order

18 Defendant next argues that Plaintiff has failed to comply with
19 the Court's order dismissing the original complaint and granting
20 leave to amend to allege facts sufficient to support her common law
21 claims and to plead averments of fraud with particularity as
22 required by Federal Rule of Civil Procedure 9(b).

23 A. False Imprisonment

24 In granting leave to amend, the Court advised Plaintiff that
25 if she "can allege, consistent with her original complaint,
26 additional facts sufficient to establish that Defendant lacked
27 legal authority to keep her on the airplane, she may replead this
28

1 claim in her first amended complaint." April 25, 2008 order at 17-
2 18. However, Plaintiff adds only conclusory statements in the FAC.
3 For example, Plaintiff alleges that her "confinement was unlawful
4 and not privileged" and that her confinement "was not based on any
5 Federal aviation law or regulation, the order of any airport
6 authority or federal and [sic] state agency or any government
7 regulation, but was solely at the instigation of Defendants." FAC
8 ¶ 92. These conclusory statements are not supported by factual
9 allegations.

10 Moreover, Defendant has cited Federal Aviation Regulations
11 which give pilots broad authority over passengers. For example,
12 14 C.F.R. § 121.533(d) provides, "Each pilot in command of an
13 aircraft is, during flight time, in command of the aircraft and
14 crew and is responsible for the safety of the passengers,
15 crewmembers, cargo, and airplane." Similarly, 14, C.F.R. § 91.3(a)
16 provides, "The pilot in command of an aircraft is directly
17 responsible for, and is the final authority as to, the operation of
18 that aircraft."

19 In light of this authority, Plaintiff's conclusory allegations
20 that her confinement was unlawful are not sufficient. Therefore,
21 the Court dismisses Plaintiff's false imprisonment claim with
22 prejudice.¹

23
24
25 ¹Plaintiff suggests that, if Defendant had legal authority to
26 keep her on the airplane, it was acting "under color of law" and
27 that its actions could therefore constitute a Fourth Amendment
28 violation. However, there is no basis in law for such a claim and
Plaintiff provides no citation in support of this argument.

2. Intentional Infliction of Emotional Distress

In the order dismissing the original complaint, the Court found that Plaintiff had "not alleged intentional conduct sufficiently extreme to support a claim for IIED," noting that "Plaintiff acknowledges that Defendant was initially responding to inclement weather at the Dallas Fort Worth Airport when it re-routed her airplane and that a substantial number of flights were similarly disrupted." April 25, 2008 order at 18. In addition, the Court found that Plaintiff had not alleged facts to support a finding that Defendant acted with the intent of causing her distress.

Plaintiff cites a number of paragraphs in the FAC that she asserts are sufficient to establish her claim for IIED. However, the vast majority of the paragraphs cited were included in the original complaint the Court already found deficient. Indeed each of the paragraphs Plaintiff cites in support of her argument that the FAC contains facts sufficient to demonstrate intent were included in the original complaint. Moreover, the paragraphs added to the FAC are either irrelevant to Plaintiff's ability to state a claim, FAC ¶¶ 59-60, or do not provide any basis for a finding that Defendant acted with reckless disregard for causing severe emotional distress, FAC ¶¶ 77-80.

Therefore, the Court dismisses Plaintiff's IIED claim with prejudice.

3. Negligence

The Court dismissed Plaintiff's negligence claim because she failed to identify any duty Defendant owed her, independent of the

1 duties set forth in the COC, which forms the basis for Plaintiff's
2 breach of contract claim. The Court granted Plaintiff leave to
3 amend this claim if she could allege facts sufficient to establish
4 such a duty.

5 As Defendant points out, some of the allegations added to the
6 FAC to support a finding of an extra-contractual duty are related
7 to Plaintiff's claim that Defendant failed in its duty to keep her
8 and other passengers safe. For example, Plaintiff alleges that
9 Defendant "owed a high duty of care for the safety and protection
10 of its passengers" and had a duty "to affirmatively aid and protect
11 Plaintiff and class members against unreasonable risk of physical
12 harm." FAC ¶¶ 115, 116. The Court previously found that "the FAA
13 and federal air safety regulations are the only grounds on which an
14 airline may be held liable for claims related to safety." April
15 25, 2008 order at 8.

16 However, Plaintiff also alleges that Defendant's duty extended
17 to

18 a) not depriving Plaintiff and other similarly situated
19 passengers of their personal liberty by unjustified
20 involuntary confinement in crowded conditions on the
21 ground in an aircraft for a lengthy period of time
22 without adequate water, food, restroom facilities, and
23 breathable air at reasonable temperatures, b) not
24 violating criminal laws of the states regarding false
25 imprisonment.²

26 FAC ¶ 117. Plaintiff asserts that these duties arise from
27 Defendant's role as a common carrier. Defendant has not
28 demonstrated that the provision of food, water, restroom facilities

26 ²Plaintiff again asserts the Fourth Amendment as a "legal
27 basis" for this claim. As stated above, there is no basis in law
28 for applying the Fourth Amendment to Defendant American Airlines.

1 and ventilation is controlled by specific regulations. Therefore,
2 these claims are not preempted by the ADA. See April 25, 2008
3 order at 14. As discussed above, Plaintiff's claims related to her
4 involuntary confinement fail. However, in light of the high
5 standard to which common carriers are held, see Andrews v. United
6 Airlines, 24 F.3d 39, 40 (9th Cir. 1994), the Court denies
7 Defendant's motion to dismiss Plaintiff's negligence claim to the
8 extent it is based on allegations of a failure to attend to
9 passengers' basic needs during the delay.

10 4. Breach of Contract

11 The Court granted Plaintiff leave to amend her breach of
12 contract claim with further detail regarding Defendant's failure to
13 comply with specific terms of the COC. In her FAC, Plaintiff
14 accuses Defendant of breaching several specific portions of the
15 COC. Defendant argues that the breach of contract claim is subject
16 to dismissal because Plaintiff is not entitled to recover damages
17 under any of the passages cited.

18 a. Paragraph Three

19 First, Plaintiff alleges that Defendant "failed to 'endeavor'
20 to carry Plaintiff and her baggage and other class members with
21 reasonable dispatch, and instead willfully chose to not carry its
22 passengers or even permit them to obtain timely alternate
23 transportation by its lengthy on ground confinement of over 3 hours
24 on December 29th, 2006." FAC ¶ 124(b). Plaintiff alleges that, in
25 so doing, Defendant violated paragraph three of the COC, which
26 provides, "American will endeavor to carry you and your baggage
27 with reasonable dispatch, but times shown in timetables or
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1 elsewhere are not guaranteed and form no part of this Contract."

2 COC ¶ 3. However, the same paragraph also provides,

3 Schedules are subject to change without notice.
4 American is not responsible or liable for failure to
5 make a connection, or to operate any flight according
6 to schedule, or for a change to the schedule of any
7 flight. Under no circumstances shall American be
8 liable for any special, incidental or consequential
9 damages arising from the foregoing.

7 Id. Because American specifically disclaims any liability for
8 failure to comply with its schedule, Plaintiff cannot maintain a
9 claim for breach of this contract provision.

10 Moreover, even if Plaintiff could establish that Defendant
11 "willfully" elected not to transport her according to schedule, she
12 would not be entitled to any damages under the terms of the
13 contract. The provision expressly disclaims liability for
14 "special, incidental or consequential damages." Plaintiff argues
15 that she is entitled to "general contract damages," which she
16 asserts include "a) the consideration paid (here the ticket price)
17 and/or b) the out of pocket costs to cover the breach of contract
18 expenses caused by and naturally flowing from the AA breaches, such
19 as failure to provide overnight lodging as promised in
20 circumstances of excessive delay, and c) potentially lost profits."
21 Opposition at 4. However, Plaintiff acknowledges that she is not
22 entitled to recover the price of her ticket because she "used all
23 portions of her ticket." FAC ¶ 124(c). Further, the Court has
24 already held that any claims based on a failure to provide
25 "lodging, meals, substitute transportation and similar expenses"
26 are preempted by the ADA. April 25, 2008 order at 14. Plaintiff
27 may only recover for a failure to provide these types of
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1 accommodations to the extent they are provided for in the COC.
2 Finally, lost profits are not recoverable as general damages for
3 breach of contract under either California or Texas law. See,
4 e.g., Lewis Jorge Const. Mgmt., Inc. v. Pomona Unified Schl. Dist.,
5 34 Cal. 4th 960, 971-72 (2004) ("Lost profits from collateral
6 transactions as a measure of general damages for breach of contract
7 typically arise when the contract involves crops, goods intended
8 for resale, or an agreement creating an exclusive sales agency.");
9 Cont'l Holdings, Ltd. v. Leahy, 132 S.W.3d 471, 475 (Tex. App.
10 2003) ("Profits lost on the breached contract itself . . . are
11 classified as 'direct' damages. Profits lost on other contracts or
12 relationships resulting from the breach are classified as
13 'indirect' damages.").

14 b. Paragraph Ten

15 Plaintiff next argues that Defendant has breached the portion
16 of the COC that provides, "If you decide not to use your ticket,
17 and unless the ticket specifies otherwise, American will issue a
18 refund . . ." COC ¶ 10. However, as stated above, Plaintiff
19 acknowledges that she is not entitled to such a refund because she
20 used all portions of her ticket. Plaintiff asserts that "other
21 class members who will be added as plaintiffs shortly, did not
22 receive refunds for unused tickets." FAC ¶ 124(c).

23 However, Plaintiff's case has not been certified as a class
24 action and she must seek a stipulation from Defendant or leave of
25 the Court to amend her complaint to add additional named
26 plaintiffs. Therefore, Plaintiff cannot bring a claim for breach
27 of a contract provision for which she has no standing.

1 c. Paragraph Eighteen

2 Plaintiff further alleges that Defendant breached paragraph
3 eighteen of the COC, which provides in relevant part:

4 American Airlines . . . will provide customers at the
5 airport and onboard an affected aircraft with timely
6 and frequent updates regarding known delays,
7 cancellations and diversions and will strive to provide
the best available information concerning the duration
of delays and to the extent available, the flight's
anticipated departure time.

8 FAC ¶ 124(d). Plaintiff alleges that Defendant breached this
9 provision "by failing to strive to provide Plaintiff and other
10 class members with 'best available information' concerning the
11 duration of delays on December 29th, 2006 and as noted above by
12 repeatedly supplying false and misleading information." Id.
13 However, Plaintiff does not indicate what damages, if any, she
14 suffered because of Defendant's failure to provide such
15 information.

16 Plaintiff also asserts that Defendant could have rerouted her
17 on another flight leaving from Austin but failed to do so in
18 violation of the provision that provides, "When cancellations and
19 major delays are experienced, you will be rerouted on our next
20 flight with available seats." COC ¶ 18. Defendant argues that
21 Plaintiff cannot sustain a breach of contract claim based on this
22 provision because she has not alleged any facts to support a
23 finding that there were other flights departing Austin with
24 available seats. However, Plaintiff alleges,

25 Plaintiff and many other class members could have been
26 rerouted on other AA flights that were taking off from
27 Austin and other airports with diverted flights for DFW
and other destinations or allowed to exit the aircraft
when the diverted airport was at or near their

1 destination, but Defendant AA in breach of this contract
2 term failed and refused to do so on December 29th and
30th, 2006.

3 FAC ¶ 1224(e). If proven true, these allegations could establish a
4 breach of contract.

5 Plaintiff also argues that Defendant breached the COC when it
6 failed to provide her with overnight accommodations in Austin.
7 However, the provision clearly states, "If the delay or
8 cancellation was caused by events within our control and we do not
9 get you to your final destination on the expected arrival day, we
10 will provide reasonable overnight accommodations, subject to
11 availability." COC ¶ 18. Plaintiff asserts that "the initial
12 delay was caused by poor maintenance, by lack of available aircraft
13 or crew members," FAC ¶ 124(f). However, Plaintiff also includes
14 allegations regarding Defendant's knowledge of "transient thunder
15 storms" at the Dallas Fort Worth Airport, id. at ¶ 52, and the two
16 and one half hour closure of that airport, id. at ¶ 68.
17 Plaintiff's factual allegations control over the contradictory
18 conclusory allegations. Plaintiff cannot base her claim for breach
19 of contract on this provision.

20 Plaintiff next cites the provision of paragraph eighteen that
21 states,

22 In extreme circumstances, it is possible that a flight
23 will cancel while on the ground in the city to which it
24 was diverted. When this happens you will be rerouted
25 on the next American Airlines or American Eagle flight
26 with available seats, or in some circumstances on
27 another airline or some other alternative means of
28 transportation. If we are unable to reroute you,
reasonable overnight accommodations will be provided by
American Airlines or American Eagle, subject to
availability.

1 FAC ¶ 124(g). Plaintiff alleges that Defendant breached this
2 provision when it failed to reroute her, provide accommodations or
3 provide alternate transportation. Defendant argues that this claim
4 fails because Plaintiff does not allege "that she made an
5 affirmative claim for reimbursement with American that was denied."
6 Motion at 18. However, Defendant does not provide any support for
7 a finding that Plaintiff was required to do so.

8 Plaintiff may pursue her claim for breach of contract based on
9 the portions of paragraph eighteen of the COC identified in
10 paragraphs 124(e) and (g) of the FAC.

11 d. Paragraph Nineteen

12 Paragraph nineteen of the COC provides,

13 In the case of extraordinary events that result in
14 very lengthy onboard delays, American Airlines and
15 America Eagle will make every reasonable effort to
16 ensure that essential needs of food (snack bar such
as a Nutri-Grain), water, restroom facilities and
basic medical assistance are met.

17 COC ¶ 19. Plaintiff alleges that Defendant "flagrantly breached
18 this contract provision for Plaintiff and nearly all other class
19 members." FAC ¶ 124(i). Defendant argues that Plaintiff was
20 provided with these amenities, citing paragraph 21 of the FAC.
21 That paragraph, which Defendant acknowledges "disputes the adequacy
22 of the food and water she received," Reply at 19, alleges,

23 At about 6:00 PM toilets were backed up; flight
24 attendants served a half Dixie cup of water, which
25 upon information and belief, was non-potable water
26 from the lavatory sinks and made some passengers sick,
27 and a small bag of pretzels with about 45 calories.

28 FAC ¶ 21. The Court finds that this alleged deficiency in services
could serve as a basis for a breach of contract claim. However,

1 Plaintiff's breach of contract claim based on this provision fails
2 because she is not entitled to any recovery. Paragraph nineteen of
3 the COC also disclaims liability "for any special, incidental or
4 consequential damages" based on a failure to meet the commitment
5 outlined. COC ¶ 19.

6 e. Paragraph Five

7 Finally, Plaintiff alleges that Defendant breached paragraph
8 five of the COC when it "denied her boarding involuntarily on
9 December 30th at the airport in DFW because [] her flight to
10 Mobile[,] Alabama was oversold and failed to pay her Denied
11 Boarding Compensation." FAC ¶ 124(j). Paragraph five provides,

12 If a flight is oversold (more passengers hold confirmed
13 reservations than there are seats available), and you
14 are denied boarding involuntarily at the airport, you
will be entitled to a payment of Denied Boarding
Compensation from American. . . .

15 COC ¶ 5. There are five exceptions to the promise of compensation.
16 Defendant argues that Plaintiff has not alleged facts sufficient
17 "to demonstrate that the five exceptions do not apply." Reply at
18 19. In particular, Defendant notes that Plaintiff has not alleged
19 sufficient facts to establish that she "fully compl[ied] with
20 American's ticketing and check-in requirements, as set forth in the
21 check-in requirements section." COC ¶ 5. Paragraph seven
22 provides, "In addition to checking in 30 minutes before departure,
23 you must be present at the departure gate and ready to board at
24 least 15 minutes prior to scheduled departure time to retain your
25 reservation and a seat." Id. at ¶ 7.

26 Defendant points out that Plaintiff alleges only as follows:

27 Arriving at DFW 20 minutes before the only AA flight to
28

1 Mobile, Plaintiff was refused boarding even though she
2 had a confirmed reservation by an AA gate agent who
3 also rudely informed her that her baggage was on the
flight to Mobile, she and her family would not be
allowed to board as the flight was oversold

4 FAC ¶ 39. Defendant argues that this is not sufficient to
5 establish that Plaintiff was checked in and holding a boarding pass
6 thirty minutes prior to departure. However, Plaintiff's allegation
7 does not contradict such a finding. Defendant also argues that
8 Plaintiff's claim fails because she has not made a claim for
9 compensation. However, Defendant does not point to anything in the
10 COC that requires such a request. Indeed, the COC provides that a
11 passenger will be "entitled" to payment and her payment "will be
12 refunded" if she meets the requirements of the paragraph.
13 Plaintiff has stated a claim for breach of contract based on this
14 paragraph. However, as stated above, Plaintiff cannot bring claims
15 for which she does not have standing. Therefore, her claim is
16 dismissed to the extent it relates to "passengers whose trip
17 includes a stop in a foreign nation." FAC ¶ 125.

18 5. Fraud

19 In its order dismissing the original complaint the Court
20 instructed Plaintiff that, if she wished to replead her fraud
21 claim, she must "identify who made the allegedly misleading
22 statements, how she will prove that they were knowingly false when
23 made, and how she relied on those statements to her detriment."
24 Plaintiff has added some allegations to support her claim.
25 Defendant argues that the additional allegations are not sufficient
26 to satisfy the requirement that averments of fraud be plead with
27 particularity. See Fed. R. Civ. P. 9(b). However, even if

1 Plaintiff's allegations regarding the allegedly fraudulent
2 statements are sufficient to satisfy Rule 9(b), she has not plead
3 reasonable reliance. In her opposition to the motion to dismiss,
4 Plaintiff characterizes her allegations of reliance as follows,

5 Had Defendant not lied to plaintiff and the other
6 similarly situated passengers and disclosed the
7 material fact that it was holding them on the ground
8 for its own pecuniary gain, and/or due to lack of
9 personnel, and that they were not going to take off in
10 the foreseeable future, rather than promulgating the
11 false excuse of bad weather, there is no doubt that
12 passengers would have been able to exit the aircraft in
13 less than the approximately 10 hours that plaintiff and
14 many others were forced to endure the confinement on
15 the ground in aircraft at remote locations until the
16 flight crews had run out their duty time and flight
17 pay, even if they had to call 911 to obtain a rescue by
18 the police.

19 Opposition at 7.

20 As Defendant notes, Plaintiff's allegation that she relied on
21 Defendant's statements in remaining on the aircraft contradicts the
22 allegation that she revoked her consent to remain on the aircraft,
23 which underlies her false imprisonment claim. The Court finds that
24 Plaintiff has failed adequately to allege that she reasonably
25 relied on the statements she alleges were fraudulent. This claim
26 is dismissed with prejudice.

27 III. New Claims

28 In addition to the claims asserted in her original complaint,
Plaintiff asserts three additional causes of action in her FAC.

A. Conversion

Plaintiff alleges that Defendant "wrongfully exercised
dominion over the baggage of Plaintiff and other class members when
it refused to return their baggage to them that was readily

1 available to be returned to Plaintiff and other class members on
2 December 29th and 30th, 2006." FAC ¶ 146.

3 Defendant first argues that Plaintiff's claims are preempted
4 by the ADA. However, the Court previously found that, "to the
5 extent they are not controlled by specific regulations, Plaintiff's
6 claims are not preempted by the ADA." April 25, 2008 order at 14.

7 Defendant next argues that the COC governs its
8 responsibilities with respect to passengers' baggage. However,
9 none of the sections cited specifically addresses Defendant's
10 responsibility with respect to allowing passengers access to their
11 baggage during lengthy delays. Similarly, the COC's limitation on
12 liability with respect to baggage only relates to "loss, damage or
13 delayed delivery of checked or transferred baggage." COC ¶ 6.
14 Plaintiff does not allege that Defendant lost her bags or that her
15 bags were delayed when she arrived in Mobile. Rather, she alleges
16 that Defendant wrongly withheld her luggage while she was in Austin
17 overnight and in DFW awaiting a connecting flight to Mobile.

18 Although it remains to be seen whether Plaintiff can prove
19 that she suffered any damages as a result of Defendant's acts or
20 that Defendant denied her of access to her luggage for a sufficient
21 amount of time to sustain her claim, such questions need not be
22 resolved at this stage. Defendant's motion to dismiss Plaintiff's
23 conversion claim is denied.

24 B. Civil Conspiracy

25 Plaintiff asserts a claim for civil conspiracy based on
26 allegations that Defendant, a manager named Al Tinsley and other
27 unidentified "operations managers of AA" "agreed to participate in
28

1 an unlawful acts [sic] of false imprisonment coupled with fraud and
2 deceit, and intentional infliction of emotional distress." FAC
3 ¶ 150. Plaintiff further alleges, "Unlawful overt acts done in
4 furtherance of this agreement included coordination with the
5 operations managers at 17 or more airport locations where aircraft
6 were diverted from DFW on December 29th, 2006 to involuntarily
7 confine passengers for 3 to 11 hours in AA aircraft on the ground."
8 Id. at 152.

9 Defendant argues that this claim fails because it is based on
10 an allegation that Defendant "conspired with its own executive
11 officers and corporate managers. However, under both California
12 and Texas law, a corporation cannot 'conspire' with its own
13 employees." Motion at 23. In her opposition, Plaintiff
14 acknowledges this deficiency and states that she wishes to amend
15 the claim "to exclude the AA corporation and provide more detail
16 for the conspiracy among several employees of AA as several Doe
17 defendants and Al Tinsley, the operations manager at Austin
18 Airport." Opposition at 14.

19 However, Plaintiff's claim is deficient for other reasons. A
20 claim for civil conspiracy consists of three elements: "(1) the
21 formation and operation of the conspiracy, (2) wrongful conduct in
22 furtherance of the conspiracy, and (3) damages arising from the
23 wrongful conduct." Kidron v. Movie Acquisition Corp., 40 Cal. App.
24 4th 1571, 1581 (1995). "The conspiring defendants must . . . have
25 actual knowledge that a tort is planned and concur in the tortious
26 scheme with knowledge of its unlawful purpose." Id. at 1582
27 (citing Wyatt v. Union Mortgage Co., 24 Cal. 3d 773, 784-86

(1979)). This knowledge must be combined with an intent to aid in achieving the objective of the conspiracy. Id.; Schick v. Bach, 193 Cal. App. 3d 1321, 1328 (1987). Nothing in Plaintiff's complaint suggests that any individuals acted with such intent or knowledge. Nonetheless, the Court grants Plaintiff leave to amend this complaint if, consistent with the requirements of Rule 11 of the Federal Rule of Civil Procedure, she can name at least one of the alleged conspirators as a defendant and allege facts sufficient to support a finding of such planning.

C. RICO

In her opposition to the motion to dismiss Plaintiff states that she "wishes to withdraw [her RICO] cause of action at this time and with leave to replead should discovery reveal information needed to refile it." Opposition at 14. Plaintiff's RICO claim is dismissed without prejudice. Consistent with Federal Rule of Civil Procedure 15, Plaintiff will need to seek a stipulation from Defendant or file a motion for leave to file an amended complaint if she wishes to amend her complaint to include such a claim in the future.

CONCLUSION

For the foregoing reasons, the Court GRANTS in part Defendant's motion to dismiss the FAC and DENIES it in part (Docket No. 60). Specifically, the Court dismisses with prejudice Plaintiff's claim for false imprisonment and her claim for breach of contract to the extent it is based on paragraphs three, ten, nineteen or the specified portions of paragraph eighteen of the COC. In addition, the Court dismisses without prejudice

1 Plaintiff's claims for civil conspiracy and RICO.

2 Plaintiff may file a second amended complaint within ten days
3 of the date of this order. Consistent with this order, Plaintiff
4 may include in the amended complaint (1) her negligence claim to
5 the extent it is based on Defendant's failure to provide adequate
6 food, water, restroom facilities and ventilation in violation of
7 its duties as a common carrier; (2) her breach of contract claim to
8 the extent it is based on paragraph five of the COC or the portions
9 of paragraph eighteen of the COC identified in paragraphs 124(e)
10 and (g) of the FAC; and (3) her conversion claim. In addition,
11 Plaintiff may include a claim for civil conspiracy if, consistent
12 with Rule 11, she can name at least one alleged conspirator as a
13 defendant and allege facts to support a finding that the individual
14 conspired with other individuals with unlawful intent.

15 IT IS SO ORDERED.

16
17 Dated: 7/11/08



CLAUDIA WILKEN
United States District Judge